IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9855 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PASCHIM PETROCHEM LTD.

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 9855 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

Mr.A.D.Oza, GP with Mr.Gori,AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 03/12/2002

ORAL JUDGEMENT

Rule. Mr.Oza, Ld.GP appears and waives service of rule on behalf of respondents. With the consent of

parties matter is finally heard today.

2. The present petition is preferred by the petitioner against the order, dated 12.6.02 passed by the DSO, Baroda whereby the application of the petitioner for licence under Solvent, Raffinate & Slop (Acquisition, Sale, Storage & Prevention of Use in Automobiles) Order, 2000 ("Solvent Order, 2000" for short). The petitioner by draft amendment also challenged the order dated 22.10.02 of the State Govt passed by the Dy.Secy, Food & Civil Supplies Dept intimating the petitioner that the appeal can be preferred before the Collector and therefore revision is premature.

3. Heard Mr.Pahwa for the petitioner and Mr.Oza, Ld.GP with Mr.Gori, AGP for the respondent authorities.

4. The contention raised on behalf of the petitioner is that inspite of specific directions given by this court passed in its order, dated 25.7.02 the DSO has taken decision upon the application for licence of the petitioner without giving opportunity of hearing. It has also been submitted that he he has rejected the application of the petitioner on the ground that there were cases under Essential Commodities Act and the detention orders were passed and so far as proceedings under Essential Commodities Act are concerned, ultimately they have been culminated in favour of petitioner. So far as the detention orders are concerned, it has been submitted that the detention order were passed in 1998 against the Managing Director and other Directors of the company who are now no more in the company and appropriate declaration is also filed before the Registrar of Companies for such purpose. It has also been submitted that in view of the subsequent instructions of the Govt dated 4.11.2000 which have been produced by the respondents in the affidavit in reply, the only ground to deny the application remains regarding earlier licences were cancelled on account of some proceedings, otherwise, the ground of detention can not be taken as basis for the purpose of deciding application for cancellation of licence. Therefore, it is submitted that the order of the authorities is illegal and deserves to be quashed and set aside.

5. On behalf of respondents, the contention raised by Mr.Gori is that the conduct of the petitioner is such that inspite of detention order passed in the year 1998 the detenues are reported to be absconding and the

management of the company was like a private company and therefore it has been submitted that this court may not exercise power at the instance of the petitioner. It has also been submitted that if any detention order is passed, such person was not entitled to have licence under the Solvent Order, 2000.

6. So far as opportunity of hearing is concerned, Mr.Gori is unable to show any valid justification on the part of the authority for not giving opportunity of hearing to the petitioner before taking final decision in the matter.

7. Keeping in view the aforesaid aspects of the matter and a perusal of the order passed by the State Govt dated 7.3.2000 read with order dated 4.11.2000, copies whereof are at annexures A & B to the affidavit in reply filed by Mr.Jagdish Gadhvi, DSO, Baroda shows that as per the order, dated 4.11.2000 the State Govt has modified the earlier order, dated 4.7.2000 and it has been stated therein that it is only in case where licence is cancelled once on account of breach, the application for licence may not be granted. I am not examining the issue as to whether the State Govt can issue such mandatory directions to the licensing authority who is supposed to take independent decision of the matter, but, suffice it to say that when the State Govt even in the subsequent instructions and as per the order dated 4.11.2000 has already clarified that the ground on which the application can not be accepted would be if the licence is cancelled on account of breach committed. Such is not the case so far as the present petitioner is concerned. A perusal of the order passed by the DSO shows that the application is declined and/or rather rejected on the ground that the detention order has been passed and therefore the ground on the basis of which the impugned order is passed, in my view, is not in existence because the State Govt has not issued any such instructions in this regard and the instructions issued earlier were modified in the subsequent order passed by the State Govt as stated hereinabove and therefore the order dated 12.6.02 passed by the DSO is on total nonapplication of mind and on other non-existant grounds.

8. The aforesaid takes me to examine the question of breach of principles of natural justice. It is an admitted position that this court has passed order directing the DSO to give opportunity of hearing before taking final decision. It is also an admitted position that no opportunity has been given and the Asst.GP is unable to show any cogent material on record that

opportunity of hearing has been given. In that view of the matter, this court is compelled to observe that the order has been passed by the DSO is without giving opportunity of hearing and it can also be primaface said that the impugned order is in breach of order dated 26.4.02 passed by this court in SCA No.13043/2000 and therefore the order can not be sustained on the ground of breach of principles of natural justice and hence deserves to be quashed.

9. In view of the above, the order dated 12.6.02 passed by the DSO at annexure "A" rejecting the application of the petitioner for licence is quashed and the DSO is directed to consider the application of the petitioner afresh keeping in view the observations made by this court earlier and also after giving opportunity of hearing to the petitioner. Such exercise shall be completed on or before 26.12.02 and the decision shall be rendered on or before 30.12.02. Petition is allowed accordingly. Rule is made absolute accordingly. There shall be no order as to costs.

3.12.02 (JAYANT PATEL,J)